

AMENDED IN ASSEMBLY JUNE 10, 2010

AMENDED IN SENATE MAY 27, 2010

AMENDED IN SENATE MAY 18, 2010

AMENDED IN SENATE APRIL 28, 2010

AMENDED IN SENATE APRIL 8, 2010

SENATE BILL

No. 1275

Introduced by Senators Leno and Steinberg

(Principal coauthor: Senator Cedillo)

(Principal coauthor: Assembly Member Caballero)

February 19, 2010

An act to amend Section 2923.5 of, and to add and repeal Sections 2923.4, 2923.7, 2923.73, and 2923.75 of, the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 1275, as amended, Leno. Mortgages: foreclosures.

~~Existing law requires that, upon a breach of the obligation of a mortgage or transfer of an interest in property, the trustee, mortgagee, or beneficiary record a notice of default in the office of the county recorder where the mortgaged or trust property is situated and mail the notice of default to the mortgagor or trustor. Existing law provides that, after not less than 3 months after the filing of the notice of default, the parties described above may give notice of sale, stating the time and place of the sale, as specified.~~

Existing law, until January 1, 2013, and as applied to mortgages and deeds of trust recorded between January 1, 2003, and December 31, 2007, that are secured by owner-occupied residential real property

containing no more than 4 dwelling units, requires a mortgagee, trustee, beneficiary, or authorized agent to contact the borrower, as defined, prior to filing a notice of default, in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. Existing law requires the notice of default to include a specified declaration from the mortgagee, beneficiary, or authorized agent regarding its contact with the borrower.

This bill would, until January 1, 2013, extend those requirements for those types of dwellings to apply to mortgages or deeds of trust recorded prior to January 1, 2009, if the loans are required to be reviewed under federal Home Affordable Modification Program (HAMP) guidelines, or between January 1, 2003, and January 1, 2009, if the loans are not required to be reviewed under HAMP guidelines. The bill would require a mortgagee, beneficiary, or authorized agent, within a specified time period prior to the filing of a notice of default, to provide the borrower with written information regarding loan modifications and a specified notice regarding the borrower's rights during the foreclosure process, subject to specified exceptions. The bill would require an unspecified state entity to make that notice available in English and specified languages. The bill would further revise the borrower contact requirements described above by requiring a mortgagee, beneficiary, or authorized agent to make reasonable borrower solicitation efforts, as specified, to explore options for the borrower to avoid foreclosure. The bill would prohibit a mortgagee, trustee, beneficiary, or authorized agent from filing a notice of default until the borrower has been evaluated and determined to be ineligible for a loan modification or the borrower has failed to submit an application prior to the passing of the deadline. The bill would specify minimum time periods in which the borrower may submit an application or supplemental information for a loan modification, and would require the mortgagee, beneficiary, or authorized agent, if it denies the application, to send a denial explanation letter within a specified time period. These requirements would not apply to a mortgagee, beneficiary, or authorized agent that has no loan modification option available to the borrower.

This bill would *further* require, until January 1, 2013, *with respect to those properties described above*, that a mortgagee, beneficiary, or authorized agent, concurrently with the filing of a notice of default, record a declaration of compliance that attests to specified facts relating to its borrower solicitation and foreclosure avoidance efforts. The bill would provide that failure to record a declaration of compliance, or

failure to materially comply with ~~these~~ *specified* provisions, would constitute grounds for the borrower to bring an action to void the foreclosure, or to recover specified damages from the mortgagee, trustee, beneficiary, or authorized agent, if specified conditions exist.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2923.4 is added to the Civil Code, to
2 read:

3 2923.4. (a) A state government entity shall create the following
4 notice in at least 12-point type and make it available in English
5 and the languages set forth in subdivision (b) of Section 1632:

6
7 “Important Notice Regarding Your Rights and Foreclosure
8 Avoidance Options: California law requires that you receive this
9 notice of your legal rights before the foreclosure process begins.

10 ARE YOU HAVING TROUBLE PAYING YOUR
11 MORTGAGE?

12 If you are having trouble paying your mortgage, you should
13 contact your loan servicer as soon as possible to discuss options
14 for avoiding foreclosure. Your loan servicer is the company listed
15 on your mortgage bills that collects your mortgage payments.

16 You may also call 1-800-569-4287 to find a housing counseling
17 agency certified by the United States Department of Housing and
18 Urban Development (HUD) that offers free services in your area.

19 POTENTIAL FORECLOSURE AVOIDANCE OPTIONS

20 One potential option for avoiding foreclosure is a loan
21 modification. Your loan servicer may be participating in the federal
22 loan modification program called the Home Affordable
23 Modification Program (HAMP), which has specific requirements
24 and guidelines. To see if your loan servicer is participating, or to
25 find out more about this program, visit
26 http://www.makinghomeaffordable.gov/contact_servicer.html.

27 Your loan servicer may, but is not required to, offer other types
28 of loan modifications instead of or in addition to HAMP. However,
29 not all loan servicers offer loan modifications, and not all borrowers
30 are eligible to apply for a loan modification. You may also qualify
31 for other options for avoiding foreclosure, such as loan refinancing,

1 a temporary forbearance, a repayment plan, short sale, or a deed
2 in lieu of foreclosure.

3 With this notice, you should have received a letter from your
4 loan servicer that describes any options for avoiding foreclosure
5 that may be available to you. That letter should describe any types
6 of loan modifications that you may be eligible to apply for, and
7 list the steps you must take to apply.

8 If the letter from your loan servicer indicates that you may be
9 eligible to apply for a loan modification and you are interested in
10 applying, you must submit the required documentation to your
11 loan servicer as soon as possible. Your loan servicer must give
12 you at least 45 days from the date you received this notice to submit
13 the required documentation. Be sure to read and carefully review
14 any communication from your loan servicer, and submit all of the
15 documentation and information required by the deadlines indicated
16 in the loan servicer's communications. If you submit all of the
17 required documentation and information by the specified deadlines,
18 your loan servicer must review your application and inform you
19 of its decision before initiating the foreclosure process.

20 If your loan servicer denies your request for a loan modification,
21 it must send you a detailed letter that explains the reason for the
22 denial and provides you with contact information for the loan
23 servicer if you need more information or want to dispute the denial.

24 THE FORECLOSURE PROCESS

25 If your loan servicer complies with the contact and notice
26 requirements described in Sections 2923.5 and 2923.73 of the Civil
27 Code, including sending you a denial explanation letter if you are
28 eligible to apply for a loan modification and submit a timely loan
29 modification application, it may proceed with the foreclosure
30 process. Your loan servicer may not foreclose on your home
31 without filing official documents with the county recorder. You
32 are entitled to receive copies of those documents.

33 Notice of Default:

34 The first step in the foreclosure process is the filing of a notice
35 of default. If your loan servicer records a notice of default on your
36 loan, it must mail you a copy of that notice by certified mail and
37 must wait at least three months before taking further steps to sell
38 your home.

39 Notice of Sale:

1 Three months after filing the notice of default, your loan servicer
2 may file a notice of sale that sets out the date, time, and place of
3 the scheduled foreclosure sale. Your loan servicer must post the
4 notice of sale on your property, mail you a copy of the notice by
5 certified mail, and wait at least 20 days before selling your home.
6 Your notice of sale will include the contact information of the
7 person or company to call if you want more information about
8 your sale date. You should make note of that contact information
9 and be sure to check for any changes to the sale date.

10 Please seek legal help if you believe that you have been denied
11 your legal foreclosure rights. Keep in mind, though, that it is illegal
12 for any person, including a lawyer, to charge you for helping you
13 with a loan modification or other effort to avoid foreclosure before
14 providing the services promised.”

15
16 (b) The English and translated forms of this notice shall be made
17 available on or before January 31, 2011.

18 (c) This section shall remain in effect only until January 1, 2013,
19 and as of that date is repealed, unless a later enacted statute, that
20 is enacted before January 1, 2013, deletes or extends that date.

21 SEC. 2. Section 2923.5 of the Civil Code is amended to read:
22 2923.5. (a) A mortgagee, trustee, beneficiary, or authorized
23 agent may not file a notice of default pursuant to Section 2924
24 until the applicable requirements of this section and Sections
25 2923.7 and 2923.73 have been satisfied.

26 (b) For all mortgage loans, a notice of default may not be filed
27 until a borrower either applies for a loan modification and has been
28 evaluated and denied for a loan modification based on the
29 requirements and guidelines ~~of~~ *used by* the mortgagee, beneficiary,
30 or authorized agent, or reasonable borrower solicitation efforts
31 have been completed and the borrower’s deadline for submitting
32 a loan modification application has passed without the borrower
33 applying for a loan modification. If a mortgagee, beneficiary, or
34 authorized agent has no loan modification option available to a
35 given borrower, a notice of default may be filed 30 days after
36 reasonable borrower solicitation efforts regarding any other
37 foreclosure avoidance options available to that borrower have been
38 completed.

39 (c) For purposes of this section, reasonable borrower solicitation
40 efforts shall consist of all of the following:

(1) After a loan becomes 16 days delinquent, but not later than 10 days after the loan becomes 60 days delinquent, a mortgagee, beneficiary, or authorized agent shall send the borrower a written communication, by certified mail with return receipt requested, containing both of the following:

(A) A copy of the informational notice described in Section 2923.4. A mortgagee, beneficiary, or authorized agent shall be subject to the requirements of this subparagraph 30 days following the availability of the English and translated forms of the notice, but in no event earlier than January 1, 2011.

(B) A letter that includes the following information, as applicable:

(i) A clear description of the loan modification options available to the borrower, if any, and a list of the steps the borrower must take to apply for a loan modification, ~~if the mortgagee, beneficiary, or authorized agent has an existing loan modification program or~~ if the borrower is otherwise eligible to be considered for a loan modification by the mortgagee, beneficiary, or authorized agent.

(ii) A statement that no loan modification option is available to the borrower, if the mortgagee, beneficiary, or authorized agent does not offer any loan modification programs or if the borrower is not eligible to be considered for a loan modification.

(iii) A toll-free telephone number that will provide access to a live representative during business hours for borrowers who wish to discuss options for avoiding foreclosure with their mortgagee, beneficiary, or authorized agent.

(iv) The Internet Web site address, if any, of the mortgagee, beneficiary, or authorized agent, where a borrower may obtain the ~~following:~~ *information described in paragraph (5).*

~~(I) Information about any available options for avoiding foreclosure.~~

~~(II) A list of financial documents borrowers should collect and be prepared to present to the mortgagee, beneficiary, or authorized agent when discussing options for avoiding foreclosure.~~

~~(III) Contact information for borrowers who wish to discuss options for avoiding foreclosure with their mortgagee, beneficiary, or authorized agent.~~

~~(IV) The toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.~~

1 (2) (A) A mortgagee, beneficiary, or authorized agent shall
2 contact the borrower in person or by telephone in order to assess
3 the borrower's financial situation and explore options for the
4 borrower to avoid foreclosure. The mortgagee, beneficiary, or
5 authorized agent shall attempt to make this contact, at a minimum,
6 by calling the borrower by telephone at the last known telephone
7 number of record at least three times at different hours and on
8 different days. These efforts shall be completed no later than 15
9 calendar days after the date that the informational notice and letter
10 required by paragraph (1) are sent. This in-person or telephone
11 communication shall be clearly identified as an attempt to initiate
12 discussion with the borrower about foreclosure avoidance options,
13 and may not include a demand for immediate payment of any past
14 due amounts owed by the borrower. During the initial contact, the
15 mortgagee, beneficiary, or authorized agent shall advise the
16 borrower that he or she has the right to request a subsequent
17 meeting and, if requested, the mortgagee, beneficiary, or authorized
18 agent shall schedule the meeting to occur within 14 days. The
19 assessment of the borrower's financial situation and discussion of
20 options may occur during the first contact, or at the subsequent
21 meeting scheduled for that purpose. In either case, the borrower
22 shall be provided the toll-free telephone number made available
23 by ~~HUD~~ *the United States Department of Housing and Urban*
24 *Development (HUD)* to find a HUD-certified housing counseling
25 agency. Any meeting may occur telephonically.

26 (B) A mortgagee, beneficiary, or authorized agent may attempt
27 to contact a borrower using an automated system to dial borrowers,
28 provided that, if the telephone call is answered, the call is
29 connected to a live representative of the mortgagee, trustee,
30 beneficiary, or authorized agent.

31 (C) A mortgagee, beneficiary, or authorized agent satisfies the
32 telephone contact requirements of this paragraph if it determines,
33 after attempting contact pursuant to this paragraph, that the
34 borrower's telephone numbers on file, if any, have been
35 disconnected.

36 (3) If contact has not been made with the borrower within two
37 weeks after the in-person or telephone contact requirements of
38 paragraph (2) have been satisfied, the mortgagee, beneficiary, or
39 authorized agent shall then send a certified letter, with return receipt

1 requested, that includes, at a minimum, the information set forth
2 in subparagraph (B) of paragraph (1) of subdivision (c).

3 (4) The mortgagee, beneficiary, or authorized agent shall provide
4 a means for the borrower to contact it in a timely manner, including
5 a toll-free telephone number that will provide access to a live
6 representative during business hours.

7 (5) The mortgagee, beneficiary, or authorized agent shall post
8 a prominent link on the homepage of its Internet Web site, if any,
9 to all of the following:

10 (A) Information about any available options for avoiding
11 foreclosure.

12 (B) A list of financial documents borrowers should collect and
13 be prepared to present to the mortgagee, beneficiary, or authorized
14 agent when discussing options for avoiding foreclosure.

15 (C) Contact information for borrowers who wish to discuss
16 options for avoiding foreclosure with their mortgagee, beneficiary,
17 or authorized agent.

18 (D) The toll-free telephone number made available by HUD to
19 find a HUD-certified housing counseling agency.

20 (d) If the mortgagee, beneficiary, or authorized agent is
21 participating in the federal Home Affordable Modification Program
22 (HAMP) or is otherwise required to review the borrower's loan
23 under HAMP guidelines, compliance with the borrower solicitation
24 requirements set forth in the applicable HAMP guidelines shall
25 satisfy the reasonable borrower solicitation efforts requirement set
26 forth in this section as long as the mortgagee, beneficiary, or
27 authorized agent provides the borrower with the written
28 communication required by paragraph (1) of subdivision (c) as
29 part of, or in addition to, the solicitation efforts conducted pursuant
30 to the applicable HAMP guidelines.

31 (e) If the loan at issue is not required to be reviewed under
32 HAMP guidelines, and the mortgagee, trustee, beneficiary, or
33 authorized agent had already filed a notice of default prior to
34 January 1, 2011, and did not subsequently file a notice of
35 rescission, then the mortgagee, trustee, beneficiary, or authorized
36 agent shall include as part of the notice of sale filed pursuant to
37 Section 2924f a declaration that the mortgagee, beneficiary, or
38 authorized agent sent a denial explanation letter to the borrower
39 that includes the information set forth in paragraph (2) of
40 subdivision (a) of Section 2923.73 at least 30 calendar days before

1 filing the notice of sale, *only* if both of the following conditions
2 are met:

3 (1) The mortgagee, beneficiary, or authorized agent has an
4 existing loan modification program or a borrower is otherwise
5 eligible to be considered for a loan modification by the mortgagee,
6 beneficiary, or authorized agent.

7 (2) The borrower applied for a loan modification no later than
8 30 calendar days after receiving the notice of default.

9 (f) A mortgagee's, beneficiary's, or authorized agent's loss
10 mitigation personnel may participate by telephone during any
11 contact required by this section.

12 (g) For purposes of this section, a "borrower" shall include a
13 mortgagor or trustor.

14 (h) A borrower may designate, with consent given in writing,
15 a HUD-certified housing counseling agency, attorney, or other
16 advisor to discuss with the mortgagee, beneficiary, or authorized
17 agent, on the borrower's behalf, the borrowers financial situation
18 and options for the borrower to avoid foreclosure. That contact
19 made at the direction of the borrower shall satisfy the contact
20 requirements of subdivision (c). Any loan modification or other
21 foreclosure avoidance option offered by the mortgagee, beneficiary,
22 or authorized agent is subject to approval by the borrower.

23 (i) (1) Subdivisions (a) and (b) shall not apply if any of the
24 following occurs:

25 (A) The borrower has surrendered the property as evidenced by
26 either a letter confirming the surrender or delivery of the keys to
27 the property to the mortgagee, trustee, beneficiary, or authorized
28 agent.

29 (B) The borrower has contracted with an organization, person,
30 or entity whose primary business is advising people who have
31 decided to leave their homes on how to extend the foreclosure
32 process and avoid their contractual obligations to mortgagees or
33 beneficiaries.

34 (C) A case has been filed by the borrower under Chapter 7, 11,
35 12, or 13 of Title 11 of the United States Code and the bankruptcy
36 court has not entered an order closing or dismissing the bankruptcy
37 case, or granting relief from a stay of foreclosure. This shall not
38 preclude a mortgagee, trustee, beneficiary, or authorized agent
39 from soliciting or considering a borrower who is in bankruptcy

1 for a loan modification, whether under the requirements of HAMP,
2 or under its own proprietary loan modification program.

3 (2) Nothing in this subdivision shall be construed to diminish
4 in any way the obligations of a mortgagee, trustee, beneficiary, or
5 authorized agent that is participating in HAMP or is otherwise
6 required to review a loan under HAMP guidelines.

7 (j) This section shall apply only to mortgages or deeds of trust
8 that are secured by owner-occupied residential real property
9 containing no more than four dwelling units. For purposes of this
10 subdivision, “owner-occupied” means that the residence is the
11 principal residence of the borrower as indicated to the lender in
12 loan documents.

13 (1) With respect to loans required to be reviewed under HAMP
14 guidelines, this section shall apply only to mortgages or deeds of
15 trust recorded prior to January 1, 2009.

16 (2) With respect to loans not required to be reviewed under
17 HAMP guidelines, this section shall apply only to mortgages or
18 deeds of trust recorded between January 1, 2003, and January 1,
19 2009.

20 (k) This section shall remain in effect only until January 1, 2013,
21 and as of that date is repealed, unless a later enacted statute, that
22 is enacted before January 1, 2013, deletes or extends that date.

23 SEC. 3. Section 2923.7 is added to the Civil Code, to read:

24 2923.7. (a) (1) In order to initiate the foreclosure process, a
25 mortgage servicer shall do both of the following:

26 (A) For purposes of completing the declaration of compliance
27 described in paragraph (2), compile in one place a record
28 demonstrating that the reasonable borrower solicitation efforts
29 required by Section 2923.5 have been met. This record shall include
30 the dates and times of, and addresses and telephone numbers used
31 for, the contact or attempted contact required by Section 2923.5.
32 The record shall be made available to the borrower within 10
33 business days if requested in writing after the notice of default has
34 been filed.

35 (B) Transmit to the foreclosure trustee *or authorized agent* a
36 declaration of compliance that is signed on behalf of the mortgage
37 servicer. The declaration shall be signed either by an individual
38 having personal knowledge of the facts stated within, or by an
39 individual with authority to bind the mortgage servicer, who
40 certifies that the declaration is based upon records that were made

1 in the regular course of the servicer's business at or near the time
2 of the events recorded. The declaration of compliance shall be
3 included as part of, or attached to, every notice of default filed
4 pursuant to Section 2924. A notice of default that does not include
5 a declaration of compliance shall not be recorded.

6 (2) The declaration of compliance shall be substantially similar
7 to the following form:

8
9 **DECLARATION OF COMPLIANCE**

10 ☐ The mortgagee, beneficiary, or authorized agent is participating
11 in the Home Affordable Modification Program (HAMP) or is
12 otherwise required to review this loan under HAMP guidelines.

13 ☐ The mortgagee, beneficiary, or authorized agent is not required
14 to review this loan under HAMP guidelines.

15 **BORROWER CONTACT**

16 ☐ This loan is not subject to Cal. Civil Code Sec. 2923.5,

17 **DECLARATION OF COMPLIANCE**

18 **I. BORROWER CONTACT SOLICITATION EFFORTS**

19 A. ☐ This loan is not subject to Cal. Civil Code Sec. 2923.5,
20 pursuant to (check all that apply):

21
22 ☐ Cal. Civil Code Sec. 2923.5(i).

23 ☐ Cal. Civil Code Sec. 2923.5(j).

24
25
26 *If item (I)(A) is checked, no further information regarding borrower*
27 *solicitation efforts is required. If item (I)(A) is not checked,*
28 *complete item (I)(B).*

29 ☐ This loan is subject to Cal. Civil Code Sec. 2923.5, and the

30
31 B. ☐ This loan is subject to Cal. Civil Code Sec. 2923.5, and the
32 mortgagee, beneficiary, or authorized agent has complied with the
33 requirements of Cal. Civil Code Sec. 2923.5 by doing the following
34 (check all that apply): *satisfying the applicable reasonable*
35 *borrower solicitation efforts described in Cal. Civil Code Sec.*
36 *2923.5(c). If checked, insert the date that the reasonable borrower*
37 *solicitation efforts were completed here: _____*

- ☐ Satisfying the applicable reasonable borrower solicitation efforts described in Cal. Civil Code Sec. 2923.5(c). If checked, insert the date that the reasonable borrower solicitation efforts were completed here: _____
- ☐ Sending the letter required by Cal. Civil Code Sec. 2923.5(c)(3).
- ☐ Sending the notice and written communication required by Cal. Civil Code Sec. 2923.5(c)(1) during the time period set forth in that section.

FORECLOSURE AVOIDANCE REVIEW

- ☐ This loan is not subject to Cal. Civil Code Sec. 2923.73,

II. FORECLOSURE AVOIDANCE REVIEW

A. ☐ This loan is not subject to Cal. Civil Code Sec. 2923.73, pursuant to (check all that apply):

- ☐ Cal. Civil Code Sec. 2923.73(e).
- ☐ Cal. Civil Code Sec. 2923.73(f).
- ☐ Cal. Civil Code Sec. 2923.73(g).

If item (II)(A) is checked, no further information regarding borrower solicitation efforts is required. If item (II)(A) is not checked, complete item (II)(B).

- ☐ This loan is subject to Cal. Civil Code Sec. 2923.73 and (check

B. ☐ This loan is subject to Cal. Civil Code Sec. 2923.73 and (check only one):

- ☐ The borrower was evaluated for a loan modification but did not qualify, and the mortgagee, beneficiary, or authorized agent sent the borrower a denial explanation letter in compliance with the requirements of Cal. Civil Code Sec. 2923.73(a)(2).
- ☐ The borrower initiated an application for a loan modification either verbally or in writing but did not subsequently submit all required written application materials and documentation by the applicable deadline, and the mortgagee, beneficiary, or authorized agent sent the borrower a denial explanation letter in compliance with the requirements of Cal. Civil Code Sec. 2923.73(a)(1).
- ☐ The borrower did not initiate an application for a loan modification either verbally or in writing by the applicable deadline.
- ☐ The borrower was offered a HAMP trial period plan, but the borrower did not accept the trial period plan or failed to comply with the terms of the plan.

- 1 ☐ The borrower was offered a permanent loan modification, but the borrower
2 did not accept the modification offered.
3 ☐ The borrower was offered *and accepted* a permanent loan modification, but
4 the borrower failed to comply with the terms of the modification.
5 ☐ The borrower communicated to the mortgagee, beneficiary, or authorized
6 agent that he or she is not interested in pursuing a loan modification.

7
8
9 *(b) This section shall apply only to mortgages or deeds of trust*
10 *recorded prior to January 1, 2009, that are secured by*
11 *owner-occupied residential real property containing no more than*
12 *four dwelling units. For purposes of this subdivision,*
13 *“owner-occupied” means that the residence is the principal*
14 *residence of the borrower as indicated to the lender in the loan*
15 *documents.*

16 ~~(b)~~

17 *(c)* This section shall remain in effect only until January 1, 2013,
18 and as of that date is repealed, unless a later enacted statute, that
19 is enacted before January 1, 2013, deletes or extends that date.

20 SEC. 4. Section 2923.73 is added to the Civil Code, to read:

21 2923.73. (a) If a borrower initiates an application for a loan
22 modification either verbally or in writing, and the mortgagee,
23 beneficiary, or authorized agent denies either a permanent loan
24 modification or a federal Home Affordable Modification Program
25 (HAMP) trial period plan, the mortgagee, beneficiary, or authorized
26 agent shall send the borrower *by certified mail no later than 10*
27 *business days following the denial decision* a denial explanation
28 ~~letter by certified mail no later than 10 business days following~~
29 ~~the denial decision.~~ *that clearly explains the reason or reasons for*
30 *the denial.*

31 (1) If the loan modification is denied because the borrower failed
32 to provide all required verification documents or information by
33 the applicable deadline as set forth in subdivision (b), the letter
34 shall indicate the date by which the documents or information were
35 to be provided, list the documents or information that were not
36 provided, and state that the borrower’s request for a loan
37 modification has been denied for this reason.

38 (2) If the borrower submitted all required written application
39 materials for a loan modification by the applicable deadline as set
40 forth in subdivision (b), and the application is denied, the denial

1 explanation letter shall include all of the following ~~in plain~~
2 *information in* English or, if communications with the borrower
3 have been primarily in one of the languages set forth in subdivision
4 (b) of Section 1632, then in that language:

5 ~~(A) The date a completed application for a loan modification~~
6 ~~was received from the borrower.~~

7 *(A) The date the mortgagee, beneficiary, or authorized agent*
8 *received the last of all the materials it requires in order to review*
9 *the borrower's application for a loan modification.*

10 (B) The date on which a decision was made regarding the
11 borrower's application.

12 (C) The final decision made by the mortgagee, beneficiary, or
13 authorized agent.

14 (D) If the mortgagee, beneficiary, or authorized agent was
15 required to consider the borrower for a loan modification under
16 HAMP, the information required to be provided in the borrower
17 notice described in the federal Home Affordable Modification
18 Guidelines Supplemental Directive 09-08, issued November 3,
19 2009, and any amendments thereto.

20 (E) Information ~~detailing~~ *explaining* the reasons the borrower
21 did not qualify for a loan modification, including, but not limited
22 to, the following:

23 (i) If applicable, an explanation of any investor guidelines or
24 restrictions on loan modifications that resulted in the denial
25 decision.

26 (ii) If the denial decision is based on the borrower's income or
27 expenses, or on a debt-to-income ratio or net present value
28 calculation, any borrower income or expense figures, including,
29 but not limited to, property taxes and hazard insurance premiums,
30 used in determining the borrower's qualification for a loan
31 modification.

32 (iii) If applicable, a finding that the borrower was previously
33 offered a loan modification and failed to successfully make
34 payments under the terms of the modified loan.

35 (F) The name and contact information of the holder of the note
36 for the borrower's loan.

37 (G) A description of other foreclosure alternatives for which
38 the borrower may be eligible, if any, including, but not limited to,
39 other loan modification programs, short sale, or deed in lieu or
40 forbearance, and a list of the steps the borrower must take in order

1 to be considered for those options. If the servicer has already
2 approved the borrower for another foreclosure alternative,
3 information necessary to participate in or complete the alternative
4 should be included.

5 (H) Instructions regarding how to contact the mortgagee,
6 beneficiary, or authorized agent ~~for further information about the~~
7 ~~denial or to dispute the basis for the denial.~~ *about the denial.*

8 (b) (1) The mortgagee, beneficiary, or authorized agent shall
9 communicate to the borrower in each contact, whether oral or
10 written, the borrower's deadline for submitting an initial application
11 for a loan modification, which shall not be less than 45 days from
12 the borrower's receipt of the notice required by subparagraph (A)
13 of paragraph (1) of subdivision (c) of Section 2923.5.

14 (2) If a borrower submits an initial application, but does not
15 include all the documentation or information the mortgagee,
16 beneficiary, or authorized agent needs in order to consider the
17 borrower for a loan modification, the mortgagee, beneficiary, or
18 authorized agent must provide the borrower with *a* written notice
19 that clearly describes any supplemental documentation or
20 information needed *in order* to consider the borrower for a loan
21 modification, and the deadline for providing that documentation
22 or information, which shall not be less than 25 calendar days from
23 the date the borrower receives the notice.

24 (3) If the mortgagee, beneficiary, or authorized agent is
25 participating in HAMP or is otherwise required to review the
26 borrower's loan under HAMP guidelines, compliance with
27 applicable HAMP guidelines regarding deadlines and timeframes
28 for the borrower to submit and complete a loan modification
29 application shall satisfy the requirements of this subdivision.

30 (c) If a borrower's request for a loan modification is denied,
31 and the mortgagee, beneficiary, or authorized agent sends a denial
32 explanation letter in compliance with subdivision (a), the
33 mortgagee, trustee, beneficiary, or authorized agent may proceed
34 to record a notice of default and declaration of compliance pursuant
35 to Section 2923.7 even if the borrower initiates a dispute relating
36 to the denial and the dispute has not yet been resolved.

37 (d) This section shall not require a mortgagee, beneficiary, or
38 authorized agent to apply any standards in determining a
39 borrower's eligibility or qualification for a loan modification
40 separate from the standards and requirements of the loan

1 modification program *or programs* utilized by the mortgagee,
2 beneficiary, or authorized agent, and shall not require a mortgagee,
3 beneficiary, or authorized agent to offer or provide a borrower
4 with a loan modification if that borrower does not qualify for a
5 modification under ~~the~~ *any* applicable loan modification program.

6 (e) This section shall not apply if the mortgagee, beneficiary,
7 or authorized agent has no loan modification program available
8 to the borrower, and the mortgagee, beneficiary, or authorized
9 agent informed the borrower of that fact in the written
10 communication required to be sent to the borrower pursuant to
11 subparagraph (B) of paragraph (1) of subdivision (c) of Section
12 2923.5.

13 (f) (1) This section shall not apply if any of the following occurs:

14 (A) The borrower has surrendered the property as evidenced by
15 either a letter confirming the surrender or delivery of the keys to
16 the property to the mortgagee, trustee, beneficiary, or authorized
17 agent.

18 (B) The borrower has contracted with an organization, person,
19 or entity whose primary business is advising people who have
20 decided to leave their homes about how to extend the foreclosure
21 process and avoid their contractual obligations to mortgagees or
22 beneficiaries.

23 (C) A case has been filed by the borrower under Chapter 7, 11,
24 12, or 13 of Title 11 of the United States Code, and the bankruptcy
25 court has not entered an order closing or dismissing the bankruptcy
26 case or granting relief from a stay of foreclosure. This shall not
27 preclude a mortgagee, trustee, beneficiary, or authorized agent
28 from soliciting or considering a borrower who is in bankruptcy
29 for a loan modification, whether under the requirements of HAMP,
30 or under its own proprietary loan modification program.

31 (2) Nothing in this subdivision shall be construed to diminish
32 in any way the obligations of a mortgagee, trustee, beneficiary, or
33 authorized agent that is participating in the HAMP or is otherwise
34 required to review a loan under HAMP guidelines.

35 (g) This section shall apply only to mortgages or deeds of trust
36 that are secured by owner-occupied residential real property
37 containing no more than four dwelling units. For purposes of this
38 subdivision, “owner-occupied” means that the residence is the
39 principal residence of the borrower as indicated to the lender in
40 loan documents.

1 (1) With respect to loans required to be reviewed under HAMP
2 guidelines, this section shall apply only to mortgages or deeds of
3 trust recorded prior to January 1, 2009.

4 (2) With respect to loans not required to be reviewed under
5 HAMP guidelines, this section shall apply only to mortgages or
6 deeds of trust recorded between January 1, 2003, and January 1,
7 2009.

8 (h) This section shall remain in effect only until January 1, 2013,
9 and as of that date is repealed, unless a later enacted statute, that
10 is enacted before January 1, 2013, deletes or extends that date.

11 SEC. 5. Section 2923.75 is added to the Civil Code, to read:

12 2923.75. (a) All of the options available to borrowers under
13 this section are available only subsequent to a trustee sale
14 conducted in accordance with Section 2924f.

15 (b) ~~(1) If the mortgagee, trustee, beneficiary, or authorized~~
16 ~~agent fails to record a completed declaration of compliance~~
17 ~~pursuant to Section 2923.7, submits a false declaration of~~
18 ~~compliance~~ *agent records a notice of default in material violation*
19 *of subdivision (b) of Section 2923.5, fails to materially comply*
20 *with the loan modification review process requirements of*
21 *subdivision (b) of Section 2923.73, or fails to send a denial*
22 *explanation letter that materially complies with the requirements*
23 *of Section 2923.73, a borrower may pursue any one of the*
24 *following options, as applicable, against the mortgagee, trustee,*
25 *beneficiary, or authorized agent:*

26 ~~(A)~~

27 (1) If the property at issue is sold to a bona fide purchaser at a
28 trustee sale conducted in accordance with Section 2924f, the
29 borrower may recover the greater of treble actual damages or
30 statutory damages in the amount of ten thousand dollars (\$10,000).

31 ~~(B)~~

32 (2) If, prior to the initiation of an action under this section, the
33 property at issue is sold to a bona fide purchaser by the foreclosing
34 party subsequent to a trustee sale conducted in accordance with
35 Section 2924f in which title was transferred to the foreclosing
36 party, the borrower may recover the greater of treble actual
37 damages or statutory damages in the amount of ten thousand dollars
38 (\$10,000). If the borrower establishes that the mortgagee, trustee,
39 beneficiary, or authorized agent had actual notice of the borrower's
40 claim under this section prior to selling the property to a bona fide

1 purchaser, the borrower shall be entitled to recover statutory
2 damages in the amount of fifteen thousand dollars (\$15,000), in
3 addition to other damages recoverable under this subparagraph.

4 ~~(C)~~

5 (3) If title to the property at issue is transferred to the foreclosing
6 party at a trustee sale conducted in accordance with Section 2924f,
7 the borrower may bring an action to void the foreclosure sale,
8 except if paragraph (2) applies.

9 ~~(2) For purposes of this subdivision, the declaration of~~
10 ~~compliance shall not be considered false if it lists an incorrect date~~
11 ~~for the date that the reasonable borrower solicitation efforts were~~
12 ~~completed, unless the mortgagee, beneficiary, or authorized agent~~
13 ~~knowingly included the wrong date on the declaration.~~

14 (c) ~~(1) If the mortgagee, trustee, beneficiary, or authorized~~
15 ~~agent fails to send the notice written communication required by~~
16 ~~subparagraph (A) of paragraph (1) of Section 2923.5 or fails to~~
17 ~~materially comply with the loan modification review process~~
18 ~~requirements of Section 2923.73, a paragraph (1) of subdivision~~
19 ~~(c) of Section 2923.5, fails to record a completed declaration of~~
20 ~~compliance pursuant to subparagraph (B) of paragraph (1) of~~
21 ~~subdivision (a) of Section 2923.7, or submits a materially false~~
22 ~~declaration of compliance, a borrower may recover statutory~~
23 ~~damages of up to ten thousand dollars (\$10,000), but not less than~~
24 ~~one thousand five hundred dollars (\$1,500), from the mortgagee,~~
25 ~~trustee, beneficiary, or authorized agent.~~

26 ~~(2) For purposes of this subdivision, the declaration of~~
27 ~~compliance shall not be considered false if it lists any incorrect~~
28 ~~dates for the date that the requirements described in the declaration~~
29 ~~were completed, unless the mortgagee, beneficiary, or authorized~~
30 ~~agent knowingly included the wrong date on the declaration.~~

31 (d) (1) Notwithstanding subdivisions (b) and (c), a borrower
32 shall not have a cause of action under this section for any failure
33 or error that is technical or de minimis in nature.

34 (2) Failure to complete any required section of the declaration
35 of compliance shall not be considered technical or de minimis.

36 (e) This section shall remain in effect only until January 1, 2013,
37 and as of that date is repealed, unless a later enacted statute, that
38 is enacted before January 1, 2013, deletes or extends that date.

39 SEC. 6. Nothing in this act shall affect any cause of action or
40 claim that is pending as of the effective date of this act.

1 SEC. 7. The requirements of Sections 2923.4, 2923.7, and
2 2923.73, the amendments to Section 2923.5 made at the 2009–10
3 Regular Session of the Legislature, and the remedies set forth in
4 Section 2923.75, shall not be construed to be retroactive.

5 SEC. 8. The provisions of this act are severable. If any
6 provision of this act or its application is held invalid, that invalidity
7 shall not affect other provisions or applications that can be given
8 effect without the invalid provision or application.

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